

ADR NEWSLETTER

DEPUTY GENERAL COUNSEL FOR DISPUTE RESOLUTION

SPRING 2007

General Counsel's Alternative Dispute Resolution Awards

On March 23, 2007, the Air Force General Counsel, the Honorable Mary L. Walker, presented three Alternative Dispute Resolution (ADR) awards for significant accomplishments in furthering Air Force ADR program goals in the workplace.

The individual award was presented to Ms. Mary A. Bishop, the ADR Program Manager for the Ogden Air Logistics Center at Hill AFB. Under Ms. Bishop's leadership, the Ogden Air Logistics Center achieved over \$1 million in cost avoidance savings and decreased workplace



From left to right: Mr. R. Philip Deavel, Deputy General Counsel for Dispute Resolution, Mr. Donald L. Cazel, Jr., Ms. Mary A. Bishop, and the Honorable Mary L. Walker.

disputes from over 1,000 in 2004 to less than 700 in 2006, the lowest of any air logistics center. Ms. Bishop's Group Facilitation Program integrated interactive interest-based negotiation skills for employees and her Group Coaching Program enhanced Hill's ability to reach its workforce with essential conflict prevention and management skills. Accompanying Ms. Bishop was Mr. Donald L. Cazel, Jr., Executive Director of the Ogden Air Logistics Center at Hill AFB.

The large organization award was presented to the 37th Training Wing ADR Program at Lackland AFB *(continued on page 3)*

Upcoming Events and Trainings

APRIL 25-27 - NEGOTIATION CENTER OF EXCELLENCE EXECUTIVE SEMINAR, Air War College, Maxwell, AFB, AL

MAY 21-24 - NEGOTIATION TRAINING FOR THE ACQUISITION WORKFORCE, Los Angeles AFB, CA

JUNE 21 - NEGOTIATION CENTER OF EXCELLENCE CROSS-CULTURAL NEGOTIATION SEMINAR, Army War College, Carlisle, PA

JULY 30 - AUGUST 3 - NEGOTIATION AND APPROPRIATE DISPUTE RESOLUTION COURSE, JAG School, Maxwell AFB, AL

NOVEMBER 14-15 - WORLDWIDE ADR CHAMPION CONFERENCE, Eglin AFB, FL

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AIR FORCE GENERAL COUNSEL DISCUSSES ETHICS AND DISPUTE RESOLUTION WITH PEPPERDINE LAW SCHOOL AND THE STRAUS INSTITUTE

■ *By R. Philip Deavel, Deputy General Counsel for Dispute Resolution*

Recently, the General Counsel of the Air Force and representatives of SAF/GCD, SAF/GCA, and SAF/GCR met with faculty of Pepperdine University Law School and leadership of the Straus Institute for Dispute Resolution to discuss the relationship between an ethical culture and effective dispute resolution. The following propositions were explored:

Ethical behavior promotes trust and is essential to consensus-based dispute resolution. An organization with a values-based ethical culture promotes respect for individuals, minimizes disputes, allows for a commitment to resolve any disputes that arise, and speeds the resolution of disagreements (because the disputants have confidence that issues will be addressed within a fair and predictable framework). Therefore, those organizations with the strongest values-based ethical cultures are also the organizations that should be the most competent at conflict management and effective in resolving disputes.

There is a tacit, logical connection between effective teambuilding, trust, and ethics. In a culture of ethical behavior, based on shared values and not just compliance with rules, employees are encouraged 1) to do the right thing, (2) to treat each other with respect and earn trust, (3) to identify potential disputes and resolve them and (3) to work in teams to solve problems collaboratively. Logically, this should be applicable to a variety of dispute resolution issues, including many that are not typically catalogued under the rubric of "dispute resolution" in large organizations in order to effectively manage and resolve conflict.

In the coming months, SAF/GC will partner with Pepperdine University to analyze and develop the thesis that there is a significant relationship between the ethical culture of an organization and the effectiveness of its dispute resolution efforts and programs. We welcome your comments on this topic as we explore it further. Please address them to SAFGCD.Workflow@pentagon.af.mil

Negotiation Training for the Acquisition Workforce

SAF/GCD and the Air Force Negotiation Center of Excellence have teamed with SAF/GCQ, SAF/AQX, and the Defense Acquisition University (DAU) to develop and deploy interest-based negotiation training for the acquisition workforce. The first two training sessions were held at Wright Patterson AFB March 12-13 and 15-16. For two days, participants were immersed in a unique blend of negotiation instruction and hands-on interactive negotiation exercises built into a single acquisition scenario. The scenario involved procurement of the next-generation unmanned aerial vehicle and the need to negotiate license rights to technical data in order to preserve the option to perform sustainment and maintenance operations with organic resources.

During the sessions, participants—who included contracting officers, acquisition managers, and program counsel—were organized into contractor and government teams. In this setting, participants learned the importance of both intra-team and inter-group negotiation. Training in intellectual property rights under government contracts was integrated into the course. The acquisition of special license rights to intellectual property is an area well suited to the application of interest-based negotiation skills.

The GCD team providing the instruction included Lynda O'Sullivan, Assistant Deputy General Counsel, Linda Myers, Associate General Counsel, and Lisa Eakman and Edward Duffy, Assistant ADR Program Managers. Linda Myers, Prof. John McElhenny of DAU, and Richard Gray of GCQ served as faculty. The next two sessions will take place at Space and Missile Command, Los Angeles AFB, May 21-24.

Air Force Negotiation Center of Excellence (NCE) Hosts 5th Executive Seminar on Cross-Cultural, Multi-Party Negotiations

The newly minted Air Force NCE recently hosted its 5th in a series of executive seminars focusing on negotiation techniques in a cross-cultural, multi-party environment. This two-day seminar was held at the National War College and featured a multi-level negotiating scenario involving interagency action in support of a tsunami relief effort. Scenario play involved the dual Department of Defense interests in supporting both the ongoing Global War on Terrorism and building enduring relationships with the affected host nation while leveraging resources with State Department and representatives of nongovernmental organizations.

This seminar hosted civilian and military decision-makers from every service, the joint commands, as well as graduate students in international affairs. Other seminars have included joint professional military education students and faculty, nongovernmental organization decision-makers, State Department leaders as well as international officers. Each of these executive seminars is custom-designed to fit the needs of the requesting audience and lies at the core of the NCE's mission: to provide cutting edge education / training on negotiation skills in a wide variety of contexts. In addition to these executive seminars, the NCE supports core and elective professional military education at Air University and sponsors research on negotiations and the development of case studies and scenarios to better prepare the warfighter.

Further information on the NCE is available at <http://negotiation.au.af.mil/> or by contacting the director, Dr Stefan Eisen 334-953-6095 (DSN 493) stefan.eisen@maxwell.af.mil, or Mr. Ken Lechter 703-588-2208 (DSN 425) kenneth.lechter@pentagon.af.mil.

General Counsel's Alternative Dispute Resolution Awards

(continued from page 1) for providing superior dispute resolution services to the Air Force's largest people installation. Since 2004, the Lackland ADR program has increased the installation's ADR attempt rate by 58 percent and its dispute resolution success rate by 69 percent. In 2006, the Wing's ADR program saved the Air Force over \$450,000 in projected litigation costs and resolved 71 of 90 cases. The Wing's efforts earned an ADR customer satisfaction rate of 84 percent and a mediator cadre satisfaction rate of 95 percent, significantly exceeding Air Force customer and cadre satisfaction goals. Accepting the award on behalf of the Wing was Mr. Norm Jacobson, the Lackland ADR Program Manager, and Colonel Eric J. Wilbur, Vice Commander at Lackland AFB.

The small organization award was presented to the Air Armament Center ADR Program at Eglin Air Force Base for establishing itself as a premier corporate resource for innovative and effective dispute resolution processes. Eglin successfully negotiated an ADR plan for union and management officials that saved thousands of dollars and countless man hours and became a "force multiplier" by supplying mediators to bases throughout the Air Force. Finally, Eglin's use of mediation and other dispute resolution techniques has resolved over 70 percent of its workplace disputes. Accepting the award on behalf of the Armament Center was Mr. Cecil Williams, the Eglin ADR Program Manager, and Colonel Dean R. Clemons, Commander of the 96th Air Base Wing at Eglin AFB.



From left to right: R. Philip Deavel, Col Eric J. Wilbur, Mr. Norm Jacobson, The Honorable Mary L. Walker

The General Counsel thanked all of the award recipients for their service on behalf of the Air Force and the American people.

Master Mediator Works to Resolve Conflicts Early On

By G.A. Volb

This article was originally published in Hill AFB's *Hill Top Times* on 11/16/06

At 5 feet 4 1/2 inches tall, she isn't what most would envision as intimidating from a physical standpoint. Yet, when she opens her mouth, those who've come in search of her help are all too eager to listen. The reason: Mary Bishop, Hill's Alternate Dispute Resolution program manager, provides professional insight into what many face at least once in a career – conflict within the workplace. ADR provides informal options, such as mediation and basic interactive soft skills training, to help those experiencing problems before they escalate. She's also the first Air Force practitioner to earn a Level IV, Master Mediator certification — the highest level of certification possible in the field. "Hill is the first Air Force Base to greatly expand the use of ADR as a preventative measure," said Ms. Bishop. "Initial efforts were reactive only, resolving grievances and EEO complaints, but a significant focus has been placed on proactive measures to identify problem areas and resolve conflicts before they result in formal complaints." The preventative process, she said, includes group facilitation and conflict coaching. "In fiscal year '06 we conducted 27 sessions involving 196 employees and their managers. We help folks discuss difficult issues and then work as a group to identify solutions." Efforts are made to coach participants on behaviors and skills that obtain more positive results in conflict situations.



Mary Bishop works to resolve conflicts at Hill before they result in formal complaints. Photo by G.A. Volb

Ms. Bishop also provides continuing education and mentor training for Hill's collateral duty mediators. "The expertise of these mediators is crucial to the success of the ADR processes," she said. Sometimes, of course, it doesn't work out: "You can lead a person to 'water,' but they have to make the choice to drink," she said. "Placing blame on the other party is often used as a justification by folks to not have to hold themselves accountable for their role in the dispute. In most disputes I've dealt with, both parties have contributed in some way to the escalation of the dispute." She said the challenge of mediation is that, "reaching a settlement is voluntary, and mediators are bound to ethics such as the parties' self determination and neutrality. It can become very frustrating when participants are entrenched in their beliefs and strong emotions, unable to shift their thoughts and behaviors to more open-minded and collaborative methods. Many times a participant can remain so self focused, it becomes impossible for them to see the situation from the other party's perspective," she said. "Many people just can't let go of wanting to validate they are right and have things their way." Being "right," she emphasized, may win the battle for the individual, but it rarely wins the war. "Wars are won through teamwork," she said, "which requires letting go of the strong desire to be right and embracing approaches that gain trust, acceptance and buy-in." Ms. Bishop, who's worked various positions on Hill for more than 30 years now, said that mediators can reach a level of "burn-out," especially when both parties are very strong willed and unyielding. "In cases where the parties are able to demonstrate empathy, find resolutions and leave shaking hands, it is very rewarding and makes it all worthwhile," she said. This includes her work for the state of Utah too. "I'm involved in state mediation programs within our schools and juvenile courts," she said. "The results are outstanding and attest to the benefits of the transformative results achieved through ADR. "I've witnessed individuals come to mediation who literally could not have eye contact with one another due to the emotional intensity," she said. "Following mediation, however, they left shaking hands, talking, laughing – it was as if a heavy weight had been lifted off their shoulders. Most people do not like being involved in conflict; they just don't have the skills to resolve it successfully."

A Uintah, Utah, native, Ms. Bishop hopes to increase the number of Hill personnel who participate in preventative ADR processes, "to help the workforce learn that conflict does not have to be a negative experience." "It can be a positive opportunity for getting to understand the people we work with better, learn new information, regain trust, respect and acceptance, and generate solutions that meet the needs of both parties," she said. One advocate of her services recently said: "She really knows her stuff. Although mediation didn't change my situation, conflict coaching has done wonders for me. Now I try to think before I speak, which has changed the dynamics between me and others. The air is definitely a lot less tense in the office, and I'm a lot less stressed."

MEDIATOR'S CORNER

Marv the Mediator answers your questions about mediation practice in the Air Force workplace disputes.

Dear Marv,

I have just been assigned to my first EEO mediation and found out that as part of his remedy, the Complainant is requesting monetary damages. I have never conducted a mediation involving a monetary issue, so I'm not sure what needs to be addressed in a settlement agreement if the parties resolve the case. Any suggestions?

Concerned about Cash

Dear Concerned,

Good thing you are thinking ahead—you will be better prepared! Agreements that involve money have a few special considerations that need to be considered and in some cases specifically addressed in settlement language: **Authority:** All payments of money by the Air Force must be pursuant to a statute authorizing such payments, so be sure that a proposed monetary payment is properly authorized by a statute, such as the Civil Rights Act, Back Pay Act, etc. Fortunately, most monetary settlements in EEO mediation do have a statutory basis, but there are exceptions and variations (for example, attorneys fees are not payable in age discrimination cases), so consult with legal counsel if you are unsure about the source of authority for a monetary settlement. Also, ensure that the management representative at the mediation has the authority to agree to a monetary settlement, or has ready access to the official who does have the authority in order to reach resolution during the mediation session. **Taxation:** It is important that all parties understand that most monetary settlements are subject to tax withholding. If the settlement calls for back pay, the amount will be subject to both income tax withholding and other standard deductions (OASDI, etc). If the settlement calls for a lump sum amount, the Complainant receives the full amount without deductions, but the Agency will also issue an IRS Form 1099 to the Complainant who is then responsible for any and all tax issues related to the monetary lump sum. As a mediator it's not your job to be a tax expert or give tax advice, but it is important to know the basic issues and make sure the parties have the opportunity to consult with their own subject matter experts before agreeing to a monetary settlement. **Amount of payment:** The exact amount of payment (including any applicable overtime, shift differentials, awards, as well as deductions for taxes, etc.) should always be included in the agreement so there are no questions later about the amount to be paid. **Timing of payment:** It is important that an agreement is written so that all parties can comply with the timing of their obligations as part of the settlement. In many cases, management can control the internal processing necessary to provide a monetary payment to a Complainant, but may not be able to control how quickly another entity (for example, Defense Finance Accounting Service - DFAS) will process final payment of the amount specified in the agreement. By clearly outlining responsibilities in the agreement, you help ensure a lasting settlement and satisfied parties! Good luck in your mediation!

Do you have a question for Marv? Email your question to Marc.Vannuys@pentagon.af.mil and Marv might answer it in the next ADR Newsletter.

USAF DEPUTY GENERAL COUNSEL FOR DISPUTE RESOLUTION

SAF/GCD

1777 N. Kent St. Ste. 11500
Arlington, VA 22209

Ph: 703-588-2205 | DSN: 425

Fax: 703-588-2050

Web: www.adr.af.mil

R. Philip Deavel -	Deputy General Counsel
Lynda T. O'Sullivan	Assistant Deputy General Counsel - Acquisition/Environmental Disputes
Marc Van Nuys	Associate General Counsel - Director, Workplace Disputes
Ken Lechter	Associate General Counsel - Negotiation Center of Excellence
Linda Myers	Associate General Counsel - ADR Training and Workplace Disputes
Ryan Morrison	Special Counsel and Special Assistant to the General Counsel
Cephas Kelly	Office Administrator
Co-ops: Dave DeGroot, Ed Duffy, Lisa Eakman, Kristin Kadar, Diane Kim, and Bryn Saxe	